

John Boehner
Chairman
8th District, Ohio

House Meets at 11:00 a.m. for Legislative Business

Anticipated Floor Action:

H.R. 1—Working Families Flexibility Act



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Floor Situation: The House will consider H.R. 1 as its only order of business today. Yesterday, the Rules Committee granted a modified closed rule providing one hour of general debate, equally divided between the chairman and ranking minority member of the Education and the Workforce Committee. The rule makes in order a committee amendment in the nature of a substitute as base text. It also makes in order five amendments that will be considered in the order listed and for the amount of time specified below. Each amendment may not be amended nor subjected to a demand for a division of the question. The rule permits Mr. Goodling or his designee to offer any of his amendments *en bloc*. Finally, the rule provides one motion to recommit, with or without instructions.

Summary: H.R. 1 amends the 1938 Fair Labor Standards Act (FLSA) to allow private sector employers to provide their employees with the choice of taking one-and-one-half hours of paid time off (also known as compensatory time or “comp” time) instead of cash wages for overtime pay. The bill also includes protections for employees to guarantee that employers do not coerce, intimidate, or threaten employees to choose comp time instead of regular overtime wages. CBO estimates that enactment will reduce federal discretionary spending by \$1 million annually. The bill was introduced by Mr. Ballenger and was reported by the Education and the Workforce Committee by a vote of 23-17.

Views (on the overall bill):

Republican Leadership:	Supports
Chairman Goodling:	Supports
Clinton Administration:	Opposes

Amendments: As state above, the rule makes in order five amendments, each debatable in the order listed and for the amount of time specified below.

Mr. Goodling will offer an amendment, debatable for 10 minutes, to require that employees must have been continuously employed and worked at least 1,000 hours within the previous year before the employer can offer them comp time. The 1,000 hour requirement makes employees eligible for comp time after working full-time for six months or part-time for one year. Supporters of the amendment argue that this requirement will ensure that the employee and the employer have a long term relationship before a comp time agreement can be made. Although the amendment applies to all temporary workers, the work threshold is designed specifically to prevent employers of construction and seasonal workers from denying them overtime wages and forcing them to take compensatory time during off-season periods. *Staff Contact: Molly Salmi, x5-7101*

Mr. Goodling will offer an amendment, debatable for 10 minutes, to reduce the maximum hours of compensatory time that may be accrued by an employee in one year from 240 to 160 hours. Proponents of the amendment argue that limiting the number of comp time hours will further protect the employee from employer violations of overtime law by limiting the temptation or financial incentive for an employer to abuse a compensatory time arrangement. *Staff Contact: Molly Salmi, x5-7101*

Mr. Boyd (as a designee) will offer an amendment, debatable for 10 minutes, to sunset the bill's provisions after five years. Supporters argue that establishing a sunset will allow Congress to evaluate the bill's success. They believe that after five years, compensatory time will be such a popular option in the private sector that there will be enough demand for Congress to permanently authorize the act. *Staff Contact: Bob Doyle, x5-5235*

Mr. Owens will offer an amendment, debatable for 10 minutes, to exempt from the bill's provisions any workers who earn less than 2.5 times the minimum wage (currently, those who earn \$11.86 or less per hour). Citing the Labor Department's findings of overtime violations effecting 170,000 workers—most of them low wage employees—proponents argue that the amendment will protect low wage workers who are most vulnerable to overtime law violations. In addition, they believe that linking the exemption to the minimum wage will provide a timeless exemption that will continue to protect low wage earners as the minimum wage increases. Opponents of the amendment counter that the bill already sufficiently protects employees and that low wage earners should be entitled to the same option to choose compensatory time as higher wage earners. *Staff Contact: Kenya Reid, x5-6231*

Mr. Miller (CA) will offer an amendment in the nature of a substitute, debatable for one hour, that allows private sector employers to offer compensatory time to employees, but under more stringent requirements. In contrast to the bill, the substitute decreases the maximum amount of comp time an employee may accrue in a year from 240 to 80 hours and permits the Labor Secretary to further decrease the maximum limit. The amendment also differs from the base text in that it requires the employer, at the employee's request, to cash-out the employee's accumulated comp time within the same pay period that the request is made, rather than within 31 days. The substitute also requires that an employer give at least 60 days notice, as opposed to a 30-day requirement in the base text, prior to withdrawing from a comp time agreement. The substitute's provisions expire after four years.

The Miller substitute creates a two-tier standard for when an employer may refuse to let employees take comp time. Whereas the base text allows an employer to refuse allowing an employee to take compensatory time off whenever it would “unduly disrupt” business operations, the amendment requires the employer to allow the employee to take comp time if the employee requests to take time off two weeks in advance and when it would not result in “substantial or grievous injury” to the workplace. The “unduly disrupt” test still applies if an employee makes the request with less than two weeks notice. The amendment also requires employees to select or not select comp time before each overtime project is performed; the base text requires that workers only enter into a comp time arrangement once, from which they may withdraw at any time.

The substitute adds numerous regulatory provisions designed to protect the employee by requiring the employer to (1) regularly report the status of accrued comp time to the employee; (2) provide the employee with information to make an informed decision about whether to choose comp time; and (3) provide the opportunity for comp time to all similarly situated employees whenever offering comp time to any employee. The substitute allows the Labor Secretary to require companies to post a surety bond to guarantee that accumulated comp time is converted into overtime pay for workers if a company goes bankrupt; in contrast the base text makes unpaid or unused compensatory time a priority claim on the employer’s assets in a bankruptcy proceeding.

The amendment extends mandatory benefits for employees who do not choose comp time by requiring that the employer allow them to take up to 24 hours of unpaid leave for educational and medical purposes. For those employees who do chose comp time, the amendment requires that compensatory time is included as “hours worked” when calculating overtime based on the 40-hour work week.

The substitute includes provisions that attempt to strengthen protections against employer violations. Specifically, the amendment (1) prohibits employers from offering comp time to employees who work less than 35 hours per week or less than 12 months a year, as well as construction, garment, and agriculture workers; (2) bars employers who offer comp time from reducing current leave benefits; (3) clarifies actions that are considered comp time violations; (4) establishes a maximum civil penalty of \$1,000 for each comp time violation; and (5) prohibits employers who have been found guilty of overtime violations from offering comp time to their employees.

Finally, the substitute establishes a federal commission to study the impact of compensatory time on the work force.

Proponents of the amendment argue that the substitute will provide workers with real employee choice between comp time and overtime wages because it provides necessary employee protections from overtime law violations. It removes the large financial incentives provided in the base text for employers to coerce employees into taking comp time in order to avoid having to pay overtime. In addition, the substitute gives more authority to the Labor Department to protect workers. It mandates worker protections to ensure that comp time agreements are truly voluntary and guarantees that employees receive due compensation for their work under all circumstances. Finally, it establishes stricter penalties against employers who violate comp time arrangements.

Opponents of the amendment argue that it creates a convoluted regulatory labyrinth that ensures that no private sector employer will offer the benefit to its employees. The substitute opens a

Pandora's Box of litigation by allowing unlimited punitive and compensatory damages against an employer. It gives the Labor Secretary broad authority to interpret how comp time will be offered, effectively giving the government new intrusive powers over the workplace. By allowing workers to count compensatory time off as hours worked, the substitute allows workers to get "double overtime." Finally, the substitute denies comp time to practically the entire country by establishing myriad classes of exempt workers. **Staff Contact: Danny Weiss, x5-2095**

Additional Information: See *Legislative Digest*, Vol. XXVI, #7, March 14, 1997.



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